

## REMARKS

Applicants respectfully request reconsideration of this application, and reconsideration of the Office Action dated July 1, 2004. Upon entry of this Amendment, claims 5, 9, 12-27, 29, 30-39 and 44 will remain pending in this application with claims 13-27, 29 and 30 having been withdrawn. Claims 4 and 40-43 are canceled by this Amendment. No new matter is incorporated by this Amendment. Applicants note this Amendment is similar to the unentered Amendment filed September 22, 2004 except that claims 38 and 39 have been amended in a different manner to better define the claimed probe or primer.

Applicants gratefully acknowledge that Examiner's indication that claims 5, 9, 12, and 31-34 are allowed.

\* \* \* \* \*

Claims 4 and 36 were objected to. In response, claim 4 has been canceled and claim 36 has been amended to correct its dependency. Hence, both objections are overcome and withdrawal of both are requested.

\* \* \*

Claims 35 and 38-44 were rejected under 35 U.S.C. § 112, second paragraph, as indefinite.

In response, claims 35 and 44 have been amended as suggested by the Examiner. Moreover, claims 38 and 39 have been amended to recite "a fragment of a polynucleotide that encodes SEQ ID NO: 2, wherein said fragment consists of at least 30 consecutive nucleotides from a polynucleotide that encodes SEQ ID NO: 2." Moreover, the metes and bounds of claims 38 and 39 would be readily apparent to those of ordinary skill in the art. Hence, the rejection is overcome and its withdrawal is respectfully requested.

\* \* \*

Claims 36 and 37 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirements.

Specifically, the Office Action asserts the terminology “host cell” is not found in the specification. In response, claims 36 and 37 have both been amended in a manner which overcomes this rejection. Hence, withdrawal of the rejection is respectfully requested.

\* \* \*

Claims 38-43 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirements.

Applicants submit that the specification adequately describes the subject matter of claims 38 and 39 by both structure (i.e. sequence) and function (i.e. for use as a probe). Hence, the rejection is overcome and its withdrawal is requested.

\* \* \*

Claims 38-43 were rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter that is not fully enabled by the specification.

The claims have been amended to refer to an isolated polynucleotide probe comprising a fragment of a polynucleotide that encodes SEQ ID NO: 2, wherein said fragment consists of at least 30 (40) consecutive nucleotides from a polynucleotide that encodes SEQ ID NO: 2. Moreover, the specification fully describes how to make and use such fragments. Hence, the objection is overcome and its withdrawal is respectfully requested.

\* \* \*

Claim 44 was rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter that is not fully enabled by the specification.

In response, claim 44 has been amended to recite that the “overexpression is achieved by increasing the copy number of said polynucleotide or by operably linking a

promoter to said polynucleotide.” Claim 44 as amended is fully enabled by the specification. See, e.g. page 12, para. [0041] to page 14, para. [0043]. Hence, this rejection is overcome and withdrawal of the rejection is respectfully requested.

\* \* \*

Claims 36-43 were rejected under 35 U.S.C. § 102(a) as purportedly anticipated by Nakagawa et al. (EP 1108790).

Claims 38-43 were rejected under 35 U.S.C. § 102(e) as purportedly anticipated by Nakagawa et al. (U.S. Pat. Appln. No. 2002/0197605).

These two rejections are addressed together as similar issues apply to both. Moreover, Applicants respectfully traverse both rejections.

The claims as amended are fully supported by the priority documents as well as the present specification. Thus, since Applicants have filed a certified translation of the priority document, each of the above cited documents are disqualified as prior art. Hence, withdrawal of each rejection is respectfully requested.

\* \* \* \* \*

Applicants respectfully submit that this Amendment and the above remarks obviate the outstanding objections and rejections in this case, thereby placing the application in condition for immediate allowance. Allowance of this application is earnestly solicited.

If any fees are due in connection with the filing of this Amendment, such as fees under 37 C.F.R. §§1.16 or 1.17, please charge the fees to Deposit Account 02-4300; Order No. 032301.216.

Respectfully submitted,

SMITH, GAMBRELL & RUSSELL, LLP

By:

*[Signature]*

Robert G. Weilacher, Reg. No. 20,531

1850 M Street, N.W., Suite 800

Washington, D.C. 20036

Telephone: (202) 263-4300

Facsimile: (202) 263-4329

Dated: October 19, 2004

RGW/BLN/jl